IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

RSA 44 of 2007.

Date of decision July 25, 2007.

Jagmohan Singh ….**Appellant.**

Versus

Kalawati and another ….**Respondents.**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?[1]

For the appellant: **Mr. Tek Chand Sharma, Advocate.**

For Respondent No. 1 **Mr. Romesh Verma, Advocate.**

Dev Darshan Sud, J. (Oral).

This is the plaintiff's second appeal against the concurrent findings of both the trial Court and the appellate Court dismissing his suit for declaration filed by him praying that mutation No. 48 pertaining to khasra Nos. 11/15 of land situated in Chak Madan in favour of late Shri Pirthi, father of the defendants, based on a registered deed of sale executed on 9.4.1973, be declared as illegal and does not bind the interests of the

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[1] *Whether reports of Local Papers may be allowed to see the judgment?*

plaintiff. The learned trial Court on the crucial issues for determination, namely "(1)whether the sale deed executed by defendant No. 2 in favour of late Shri Pirthi, father of defendant No. 1, vide mutation No. 48 is null and void as alleged"; and "(2)whether the plaintiff has got no locus standi to file the suit", held as a fact that the execution of the sale deed was in accordance with law, and the plaintiff had no claim which he could urge. It was held that Ex.DW-1/A was a gift deed having been executed in favour of defendant No. 2 and the plaintiff had no right in the land. The suit was accordingly dismissed. The learned appellate Court considered the case in its entirety affirming the findings of the learned trial Court. The other documents referred to by the plaintiff in the nature of revenue record etc. also did not lead to any other conclusion except that the plaintiff was not the owner of the land and as such was not entitled to any relief.

I have heard the learned counsel for the parties and gone through the record. Learned counsel appearing for the plaintiff-appellant has reiterated the grounds which had been urged before the learned trial Court and which, as a fact, had been concluded by the learned trial

Court. A reading of the judgments and a perusal of the record shows that there is no illegality in the findings rendered by the two Courts below. It is not possible for me to undertake reappreciation of evidence exercising jurisdiction under Section 100 of the Code of Civil Procedure. There is no merit in this appeal which is accordingly dismissed.

a perusal of the record shows that there is no illegality or perversity in the findings rendered by the two Courts below. It is not possible for this Court to undertake reappreciation of evidence exercising jurisdiction under Section 100 of the Code of Civil Procedure. There is no merit in this appeal which is accordingly dismissed. All pending applications shall stand dismissed.

CMP 549 of 2007.

This application has been moved under Order 6 Rule 17 of the Code of Civil Procedure with a prayer that amendment may be allowed in the plaint as it has been found that there is typographical mistake in the plaint and lack of pleading which resulted into miscarriage of justice to the plaintiff-appellant. Learned counsel urged that if this application is considered, the plaintiff

would be entitled to the relief as prayed for. I have already held that the concurrent findings of the two Courts below cannot be set aside. The plaintiff – appellant cannot be allowed to amend his plaint at this stage, nor seek reversal of the findings arrived at by the two Courts below on the basis of the amendment. The pleadings in this application also show that the plaintiff has been pursuing a case both in the trial Court and in the appellate Court with a particular pleadings having lost in both the Courts; the prayer of the plaintiff cannot be allowed to seek reversal of the findings recorded by both the learned Courts below. This application is dismissed.

July 25, 2007(PC). (Dev Darshan Sud), J.